Consolidated Work Opportunities, Inc. *and* International Union of Operating Engineers, Local 465. Case 11–CA–19765

September 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charge filed by the Union on November 25, 2002, and March 11, 2003, the General Counsel issued the complaint on March 31, 2003, against Consolidated Work Opportunities, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On May 14, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On May 16, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 28, 2003, notified the Respondent that unless an answer were received by May 5, 2003, a motion for default judgment would be filed.[2]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all material times herein, a North Carolina corporation, with a job site located at the Marine Corps Air Station at Cherry Point, North Carolina, where it is engaged in providing manpower contracting services pursuant to a contract with the United States Government. During the 12-month period preceding the issuance of the complaint, the Respondent provided services valued in excess of $50,000 to the United States Government. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Union of Operating Engineers, Local 465, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by Respondent under government contract at Marine Corps Air Station in Cherry Point, North Carolina, but excluding all office clerical employees, professional and managerial employees, guards and supervisors as defined in the Act.

On or about October 1, 2000, S3 Limited (S3), after winning a bid to perform ISSOP specified contract work on the U.S. Navy installation at the Marine Corps Air Station at Cherry Point, North Carolina, entered into a collective-bargaining agreement with the Union covering a specific segment of the employees set forth above. This contract expires by its terms on September 30, 2003.

On or about October 1, 2000, after winning a bid to perform ISSOP specified contract work on the U.S. Navy installation at the Marine Corps Air Station, George K. Sharp, Inc. (Sharp), and the Union entered into a collective-bargaining agreement covering a specific segment of the employees set forth in the unit. This contract expires by its terms on September 30, 2003.

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

[2] A copy of the Region's April 28, 2003 letter was sent to the Respondent by certified and regular mail. On May 6, 2003, a copy of the "Track and Confirm" notice from the United States Postal Service reflected that the Region's April 28, 2003 letter was delivered to the Respondent in New Bern, North Carolina at 12 p.m. In view of the fact that no true copy of the signed postal receipt has been received, the General Counsel requests permission to file a true copy of the signed postal receipt as a late filed Exhibit once it is returned to the Region by the United States Postal Service. We grant the General Counsel's request.

On or about March 28, 2002, Sharp assumed work being performed by S3 at the Marine Corps Air Station in Cherry Point, North Carolina, which work it performed through September 30, 2002.

On or about October 1, 2002, the Respondent obtained the contract for a portion of the work previously performed by Sharp. Since that date, the Respondent has, without hiatus, engaged in the same business operations, at the same location, providing the same services to the same customer, with a majority of the same employees who were previously employed by Sharp.

By virtue of the operations described above, the Respondent is a successor of Sharp.

The Respondent assumed the operations described above without notifying its predecessor's employees who now worked for the Respondent of any changes in their terms and conditions of employment.

At all times since October 1, 2002, and continuing to date, the Union has been the representative for the purpose of collective bargaining of the employees in the unit, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about October 1, 2002, and continuing to date, the Respondent has failed and refused to recognize and bargain collectively with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees of the Respondent in the unit.

On or about October 1, 2002, and at all times thereafter, the Respondent unilaterally, without notice to or bargaining with the Union with respect to the unit:

(a) changed the health insurance benefits of its unit employees;

(b) stopped making contributions to the employee pension plan;

(c) stopped making severance pay contributions;

(d) stopped paying its employees call-in pay; and

(e) stopped paying report-in pay.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has engaged in, and is engaging in, unfair labor practices, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing its unit employees' health insurance benefits, we shall order the Respondent to rescind this action, restore the unit employees' health insurance benefits, and reimburse unit employees for any expenses ensuing from the Respondent's unilateral changes to the health insurance benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn.2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally discontinuing pension plan and severance pay contributions for unit employees since October 1, 2002, we shall also order the Respondent to make whole its unit employees by making all delinquent pension and severance pay contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also be required to reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[3]

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally discontinuing the payment of call-in pay and report-in pay to its unit employees since October 1, 2002, we shall also order the Respondent to make whole its unit employees for any loss of earnings and other benefits they may have suffered as a result of these unlawful changes, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Consolidated Work Opportunities, Inc.,

[3] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

Cherry Point, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Union of Operating Engineers, Local 465, as the exclusive collective-bargaining representative of the unit employees. The unit is:

> All full-time and regular part-time employees employed by Respondent under government contract at Marine Corps Air Station in Cherry Point, North Carolina, but excluding all office clerical employees, professional and managerial employees, guards and supervisors as defined in the Act.

(b) Unilaterally changing its unit employees' health insurance benefits.

(c) Unilaterally discontinuing pension plan and severance pay contributions for unit employees.

(d) Unilaterally discontinuing payment of call-in pay and report-in pay to its unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize, and on request, bargain with the International Union of Operating Engineers, Local 465, as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request, rescind the unilateral changes made to unit employees' health insurance benefits since October 1, 2002, restore the unit employees' health insurance benefits, and make whole the unit employees for any expenses resulting from this unilateral action, with interest, in the manner set forth in the remedy section of this decision.

(c) Make all delinquent pension and severance pay contributions that have not been made since October 1, 2002, and reimburse the unit employees for any expenses resulting from its failure to make the required payments, with interest, in the manner set forth in the remedy section of this decision.

(d) Make whole its unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's discontinuing the payment of call-in pay and report-in pay to its unit employees since October 1, 2002, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Cherry Point, North Carolina, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2002.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 29, 2003

Robert J. Battista,	Chairman
Peter C. Schaumber,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the International Union of Operating Engineers, Local 465, as the exclusive collective-bargaining representative of our unit employees. The unit is:

> All full-time and regular part-time employees employed by us under government contract at Marine Corps Air Station in Cherry Point, North Carolina, but excluding all office clerical employees, professional and managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally change your health insurance benefits.

WE WILL NOT unilaterally discontinue making pension plan and severance pay contributions on your behalf.

WE WILL NOT unilaterally discontinue paying you call-in pay and report-in pay.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the International Union of Operating Engineers, Local 465, as your exclusive collective-bargaining representative and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WE WILL, on request, rescind the unilateral changes made to your health insurance benefits since October 1, 2002, and make you whole for any expenses resulting from this unilateral action, with interest.

WE WILL make all delinquent pension and severance pay contributions that have not been made since October 1, 2002, and reimburse you for any expenses resulting from our failure to make the required payments, with interest.

WE WILL make you whole for any loss of earnings and other benefits you may have suffered as a result of our discontinuing the payment of call-in pay and report-in pay since October 1, 2002, with interest.

CONSOLIDATED WORK OPPORTUNITIES, INC.